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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/936,686 | 03/14/2002 | John Robinson | 7434-2 | 9238 |

7590 01/13/2004

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EXAMINER

WEINSTEIN, STEVEN L

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1761

8

DATE MAILED: 01/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09A36086

Applicant(s)

ROBINSON

Examiner

S. WEINSTEIN

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☒ Responsive to communication(s) filed on 9/17/01
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-20 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-20 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. _____.
- ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 3
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soughan (6,004,593) in view of Lehrer (5,885,633) further in view of Porzio et al (5,603,971) and Marmo (4,311,720), further in view of Holbradi et al (HU 39343), Newhall (5,094,860), Holzner et al (4,880,649), Soughan (5,932,260), Loizzi (5,043,172) Tucker et al (5,656,315) and Perzola et al (5,518,742).

Soughan ('593) discloses a process for the flavoring of product to be infused comprising the steps of producing encapsulated particles of flavor and bonding the particles to a porous carrier. See eg. Col.3 Para. 4 of Soughan. Claim 1 differs from Soughan in the recitation that the flavor is applied by a metered printing process. Soughan appears to be silent in this regard. As evidenced by Lehrer, it is well established in the art to bond flavor to a porous carrier by employing a conventional printing process. See in this regard, Col.4, para.4 of Lehrer et al. To modify Soughan, if necessary, and substitute one conventional means to associate flavoring agent with a porous carrier for another conventional means to associate flavoring agent with a porous carrier for its art recognized and applicants intended function would have been obvious. Porzio et al and Marmo are relied on as further evidence of the conventionality of encapsulated flavor whereas Holbradi et al, Newhall, Holzner et al, Soughan ('260), Loizzi, Tucker et al and Pergola et al are all relied on as further evidence of associating flavoring with porous carriers. It is noted that the preamble of claim 1 is inconsistent with the body of the claim since the


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preamble calls for a process for flavoring a product to be infused but the body of the claim only recites bonding flavor particles to a porous carrier that is not recited as containing a product and does not have an infusing step or each associating the porous carrier to a product to be infused. A tissue is a porous carrier. In regard to the dependent claims, the art taken as a whole teaches that the carrier is cellulose based (claim 2); that polysaccharide, and specifically modified starch, and more specifically n-octenyl succinate modified starch, (see eg. Porzio) is a conventional encapsulating material for flavor; and that natural gums are also well known encapsulating material for flavor (again, see Porzio). To modify the disclosure of flavor encapsulates of Soughan ('593) and employ a conventional encapsulating material for its art recognized and applicants intended function would therefore have been obvious. In regard to claims 3,7,8,9 and 10, which do not recite specific encapsulants, only properties of the encapsulants, since the art taken as a whole teaches applicants disclosed and recited encapsulants are notoriously well known, and have been used as flavor encapsulants, their use and their inherent properties would therefore have been obvious. Claims 11-20, the article claims, are rejected for the reasons given above.

The remainder of the references cited on the USPTO 892 form are cited as pertinent art.

Any inquiry concerning this communication should be directed to Exr. Steven Weinstein whose telephone number is 571-272-1410.

S. Weinstein/lap
December 15, 2003


STEVE WEINSTEIN
PRIMARY EXAMINER 1761
1/11/04